

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ethan Waterman	Team: Squad #10	CCRB Case #: 201910287	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 11/25/2019 6:00 PM	Location of Incident: § 87(2)(b)	Precinct: 72	18 Mo. SOL 5/25/2021	EO SOL 1/9/2022	
Date/Time CV Reported Tue, 11/26/2019 12:49 PM	CV Reported At: CCRB	How CV Reported: E-mail	Date/Time Received at CCRB Tue, 11/26/2019 12:49 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LSA Mark Lanigan	00000	895109	E S U
2. CPT Stephen Espinoza	00000	925246	E S U
3. DTS Michael Marotta	5446	947213	ESS 05

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Rudy Urena	04706	955609	ESS 08
2. SGT Matthew Fried	01790	934884	ESS 06
3. DTS Matthew Ogrady	07727	925851	ESS 06
4. POM Antonio Meyers	08696	966715	072 PCT
5. POM Roger Haynes	19893	964047	072 PCT
6. SGT Yuriy Zevelev	05636	955693	072 PCT
7. POM Kenneth Olsen	04528	954191	ESS 06
8. POM Brian Benvenuto	23866	952459	ESS 08

Officer(s)	Allegation	Investigator Recommendation
A.CPT Stephen Espinoza	Abuse: Captain Stephen Espinoza entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.CPT Stephen Espinoza	Abuse: Captain Stephen Espinoza forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
C.LSA Mark Lanigan	Abuse: Lieutenant Mark Lanigan searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
D.LSA Mark Lanigan	Abuse: Lieutenant Mark Lanigan damaged § 87(2)(b)'s property.	§ 87(2)(b)
E.DTS Michael Marotta	Abuse: Detective Michael Marotta searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

### Case Summary

On November 26, 2019, § 87(2)(b) filed this complaint via email with the CCRB.

On November 25, 2019, at approximately 6:00 p.m., § 87(2)(b) was inside her residence at § 87(2)(b), in Brooklyn. Officers from the 72<sup>nd</sup> Precinct, including Sergeant Yuriy Zevelev, Police Officer Roger Haynes, and Police Officer Antonio Meyers, responded to a 911 call at the location, and Sgt. Zevelev called the Emergency Service Unit (ESU) for assistance. ESU officers, including supervisor Captain Stephen Espinoza, Lieutenant Mark Lanigan, Sergeant Matthew Fried, now-retired Detective Matthew O'Grady, Detective Michael Marotta, Police Officer Brian Benvenuto, Police Officer Kenneth Olsen, and Police Officer Rudy Urena, forcibly entered § 87(2)(b)'s apartment (**Allegation A: Abuse of Authority, § 87(2)(g)**). Captain Espinoza then removed § 87(2)(b) to § 87(2)(b) (**Allegation B: Abuse of Authority, § 87(2)(g)**). After § 87(2)(b)'s removal, the ESU team, supervised by Lieutenant Mark Lanigan, searched § 87(2)(b)'s apartment, including her closets, and broke locks off padlocked closet doors (**Allegations C and D: Abuse of Authority, § 87(2)(g)**). Detective Michael Marotta of ESU searched through § 87(2)(b)'s refrigerator, freezer, and oven (**Allegation E: Abuse of Authority, § 87(2)(g)**).

§ 87(4-b) § 87(2)(g)

§ 87(2)(b) was not arrested or summonsed during this incident.

The investigation received body-worn camera footage and surveillance footage from § 87(2)(b).

The relevant aspects of this video footage shall be discussed in further detail below.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Captain Stephen Espinoza entered § 87(2)(b) in Brooklyn.**

**Allegation (B) Abuse of Authority: Captain Stephen Espinoza removed § 87(2)(b) to the hospital.**

It is undisputed that under the supervision of Captain Espinoza, ESU officers entered § 87(2)(b)'s home and removed her to an ambulance that took her to § 87(2)(b).

§ 87(2)(b) testified (BR 01) that at approximately 6:00 p.m. on November 25, 2019, a male police officer knocked on her door. § 87(2)(b) was home alone at the time and was preparing to go to school. The officer said that police had come to her apartment because someone had called and said that there was an emergency at her apartment. The officer told § 87(2)(b) to open the door so he could ensure that everything was okay in the apartment. The officer further told § 87(2)(b) that an ambulance had come for § 87(2)(b) and that she needed to come outside to be evaluated by EMS. § 87(2)(b) said that she wanted EMS to come inside her apartment, but the police officer told her that she needed to come outside. Officers then forcibly opened her door and entered the apartment.

On the night of November 25, 2019, § 87(2)(b)'s sister, § 87(2)(b) (BR 02) spoke with § 87(2)(b) over Snapchat. § 87(2)(b) told § 87(2)(b) that she was hearing voices in her head. § 87(2)(b) was hysterical, upset, and alone at home. § 87(2)(b) then directed her daughter, § 87(2)(b) to call 911, which she did. § 87(2)(b) then spoke with the 911 dispatcher; she told the dispatcher that § 87(2)(b) needed help, that she was home alone, and that she had been diagnosed with bipolar disorder and schizophrenia. § 87(2)(b) denied telling any officers that § 87(2)(b) was suicidal.

The EVENT information (BR 03) regarding this incident shows that § 87(2)(b) called 911 at 6:00 p.m. on November 25, 2019. The EVENT information lists that § 87(2)(b) told the dispatcher that § 87(2)(b) was off her medication, that § 87(2)(b) had bipolar disorder and schizophrenia, that § 87(2)(b) was hallucinating, and that § 87(2)(b) was not at the location.

The investigation was unable to receive the 911 CD regarding this incident due to Covid-related courier issues and delays, resulting in the deletion of this recording.

PO Haynes and PO Meyers, both of the 72<sup>nd</sup> Precinct, arrived at § 87(2)(b) at

approximately 6:07 p.m. per their BWCs and the EVENT information. They were the first members of service to arrive at the incident location.

PO Haynes' and PO Meyers' consistently testified (BR 04-05) that EMS was present upon arrival, but that EMS had not yet spoken with § 87(2)(b). Both PO Haynes and PO Meyers knocked on the two entry doors of § 87(2)(b) several times to no response and spoke with neighbors in the building who attested that § 87(2)(b) was inside her apartment. Both PO Haynes and PO Meyers looked into the windows of § 87(2)(b)'s apartment, both street-facing and rear-yard-facing, to ascertain her presence, but were unable to determine whether she was inside the apartment.

PO Haynes' and PO Meyers' BWC activations (BR 06-07) corroborate their statements. Between the 01:00 and 34:35 timestamps of PO Haynes' BWC activation, PO Haynes knocks on § 87(2)(b)'s door two times, rings her intercom bell four times, knocks on the street-facing windows twice, and shines a flashlight through the street-facing windows twice. Between the 01:00 and 34:35 timestamps of PO Meyers' BWC activation, PO Meyers assists PO Haynes in several of the above-referenced actions and speaks with a neighbor at 17:50 who attests that § 87(2)(b) is inside her apartment.

Sgt. Zevelev, the patrol supervisor for the 72<sup>nd</sup> Precinct on the night of this incident, arrived at § 87(2)(b) at approximately 6:08 p.m.

Sgt. Zevelev testified (BR 08) that, upon his arrival, the first responding officers (PO Haynes and PO Meyer) had already knocked on § 87(2)(b)'s door and received no response. Sgt. Zevelev learned from neighbors that § 87(2)(b) had been screaming in the minutes prior to officers' arrival. Sgt. Zevelev, however, could not determine whether § 87(2)(b) was inside her apartment, as she had not responded to officers' knocking on her door. Sgt. Zevelev called § 87(2)(b) and spoke with her for assistance in confirming § 87(2)(b)'s presence inside the apartment. § 87(2)(b) told Sgt. Zevelev that § 87(2)(b) had been hallucinating and had said that there was a man "out to get her." Furthermore, § 87(2)(b) said that § 87(2)(b) was suicidal. Sgt. Zevelev called § 87(2)(b) several times but did not receive a response. Sgt. Zevelev then directed several officers to go to the backyard of § 87(2)(b) and determine whether § 87(2)(b) was home. Meanwhile, Sgt. Zevelev called § 87(2)(b) who told him that § 87(2)(b) had texted her and confirmed that § 87(2)(b) was inside the apartment. Sgt. Zevelev testified that the officers in the backyard informed him that a bathroom door, which had at first been seen ajar, had been closed in the apartment, further leading Sgt. Zevelev to believe that § 87(2)(b) was inside the apartment. Sgt. Zevelev called ESU in regard.

Sgt. Zevelev's BWC activation (BR 09) is generally consistent with his testimony: between the 01:00 and 38:00 timestamps, Sgt. Zevelev speaks with § 87(2)(b) several times, speaks with § 87(2)(b) once, speaks with a neighbor who attests that § 87(2)(b) is home, knocks on § 87(2)(b)'s door to no response, and says that § 87(2)(b) told him that § 87(2)(b) was suicidal. In Sgt. Zevelev's BWC, one can only hear Sgt. Zevelev's side of the conversation with the Mogrovejos.

Per the EVENT information (BR 03), Sgt. Zevelev requested ESU assistance at 6:32 p.m. The first ESU unit arrived at 6:47 p.m.

Per Sgt. Zevelev's BWC activation (BR 09) between the 40:50 and 41:55 timestamps, Sgt. Zevelev tells the first responding ESU officers, which the investigation determined were PO Olsen and Det. O'Grady, that Sgt. Zevelev had been told by § 87(2)(b) that § 87(2)(b) was suicidal. Sgt. Zevelev further noted that neighbors told him that § 87(2)(b) had been screaming five minutes before officers arrived and that § 87(2)(b) had been in contact with § 87(2)(b). Sgt. Zevelev told the ESU officers that he could not confirm whether § 87(2)(b) was inside the apartment but noted that § 87(2)(b) had been previously removed from the apartment.

Sgt. Fried of ESU arrived at § 87(2)(b) minutes later. Sgt. Fried testified (BR 10) that he spoke with PO Olsen, Det. O'Grady, and Sgt. Zevelev. Sgt. Fried learned that § 87(2)(b) was a female emotionally disturbed person who had schizophrenia, had been off her medication for approximately one year, and that she was inside one of the ground floor apartments. Thereafter, Sgt.

Fried, along with PO Olsen and Det. O’Grady, knocked on § 87(2)(b)’s door again. At this time, § 87(2)(b) began speaking with the ESU officers almost immediately through her door and thus confirmed that she was inside the apartment.

Per PO Meyers’ BWC activation (BR 07), § 87(2)(b) first speaks with ESU officers at approximately 7:05 p.m., at the 57:00 timestamp.

Sgt. Fried testified (BR 10) that he notified Lieutenant Lanigan of ESU in regard. Sgt. Fried continued to speak with § 87(2)(b) through the door along with PO Olsen and Det. O’Grady. § 87(2)(b) acknowledged that she had schizophrenia and had discontinued her medication without consult from a doctor or clinician. § 87(2)(b) also said that she would not leave her apartment, and that she would seek assistance from her own physician and ignore any requests from the officers. Sgt. Fried, along with PO Olsen and Det. O’Grady explained that, given the late hour, her physician would likely be unable to assist her, whereas he and the officers were going to bring her to a mental health professional and that everything would be alright. Minutes later, § 87(2)(b) arrived at § 87(2)(b). § 87(2)(b) Sgt. Fried spoke with § 87(2)(b) who confirmed to Sgt. Fried that § 87(2)(b) had schizophrenia, was off her medication, was acting erratic, and had previously engaged in self-injurious behavior when off her medication.

At the 01:10:15 timestamp of Sgt. Zevelev’s BWC (BR 09), he speaks with § 87(2)(b) who had arrived outside of § 87(2)(b) by car. § 87(2)(b) tells him the following; that § 87(2)(b) has been forcibly removed to the hospital twice in recent years; that § 87(2)(b) was hysterical and going crazy before she hung up on her; that § 87(2)(b) was paranoid and believed that people were out to get her; that § 87(2)(b) had schizophrenia; that § 87(2)(b) was off her medication for an extended period; that § 87(2)(b) was alone inside the home. § 87(2)(b) does not make any statements that § 87(2)(b) was suicidal.

Per Sgt. Fried’s testimony (BR 10), Captain Espinoza, Lieutenant Lanigan and Sgt. Fried conferred and made the decision that officers were going to make entry so § 87(2)(b) could be evaluated at the hospital. Sgt. Fried testified that they made this decision as § 87(2)(b) met the criteria as an emotionally disturbed person (EDP) who presented an imminent threat to herself, and through their collective knowledge and experience they agreed that every reasonable avenue short of making entry and forcing the removal had been exhausted.

Per Sgt. Fried’s testimony (BR 10), officers warned § 87(2)(b) that if she did not voluntarily agree to go to the hospital, that they were going to take her door down and remove her to the hospital. § 87(2)(b) refused. § 87(2)(b) told officers that she was not dressed to go to the hospital. Officers responded by telling § 87(2)(b) multiple times to put clothes on. § 87(2)(b) refused to do so, which Sgt. Fried noted was a fairly common stalling tactic in EDP situations. Ultimately, ESU officers forcibly entered the apartment with a ram and handcuffed § 87(2)(b). ESU officers clothed § 87(2)(b) – she was only wearing a towel – and handed § 87(2)(b) back to precinct officers who escorted her into the ambulance.

Lieutenant Lanigan testified (BR 11) that upon his arrival he spoke with Sgt. Fried and Sgt. Zevelev. Lieutenant Lanigan was informed of the proceeding information by the two sergeants: § 87(2)(b) had a schizophrenic history, had stopped taking her medication, and had a history of self-injurious behavior when off her medication. Lieutenant Lanigan testified that given the way § 87(2)(b) had acted up to the point of his arrival, given her past medical history, and given what § 87(2)(b) told officers, § 87(2)(b) would need to be evaluated at a hospital. Lieutenant Lanigan testified that EMS had also concluded that § 87(2)(b) needed to be removed to a hospital. Lieutenant Lanigan testified that his supervisor, Captain Espinoza, and the borough’s duty inspector were present on-scene. Lieutenant Lanigan testified that Captain Espinoza or the duty inspector would have made the final decision regarding whether ESU officers would be allowed to enter § 87(2)(b)’s apartment.

The investigation determined that Inspector Michael Nemoyten was the duty inspector present during this incident. Per CTS+, Inspector Nemoyten was last active in July 2020.

Captain Espinoza, identified as the next-highest ranking officer known to be on scene,

testified (BR 12) that he had no independent recollection of this incident and did not remember if he ordered officers to enter § 87(2)(b)'s apartment or to remove § 87(2)(b) to the hospital. Captain Espinoza noted, however, that his lack of recognizance was only indicative of how routine he found this incident to be in his line of work as an ESU commanding officer. PO Haynes prepared an AIDED report (BR 19) regarding this incident. The AIDED noted that § 87(2)(b) had spoken to § 87(2)(b) about harming herself, that § 87(2)(b) barricaded herself and was unresponsive, and that ESU removed her from the apartment. PO Haynes also wrote in the AIDED that § 87(2)(b) was not a danger to herself or others at the time she was removed to the hospital.

Per Patrol Guide Procedure 221-13 (BR 20), “when a uniformed member of the service reasonably believes that a person who is apparently mentally ill or emotionally disturbed, [they] must be taken into protective custody because the person is conducting himself in a manner likely to result in a serious injury to himself or others.”

The Court of Appeals of New York confirmed the contours of the “emergency exception” to enter and search a premises in *People v. Doll, 21 N.Y.3d 665* (BR 21). So long as the police have “reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property,” so long as the entry is not “primarily motivated by an intent to arrest and seize evidence,” and so long as there is “some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched,” a police entry of a location is permissible.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

**Allegation (C) Abuse of Authority: Lieutenant Mark Lanigan searched § 87(2)(b) in Brooklyn.**

**Allegation (D) Abuse of Authority: Lieutenant Mark Lanigan damaged § 87(2)(b)'s property.**

It is undisputed that ESU officers, upon entering § 87(2)(b)'s apartment, searched the apartment and, in the process, broke open several locked closets.

These allegations have been pled to Lieutenant Lanigan because he was the highest-ranking supervisor who oversaw the search of § 87(2)(b)'s apartment.

Det. O'Grady's BWC activation (BR 15) shows that PO Urena opens a locked bedroom closet (approximately 7' tall and 30" wide) with an iron at the 08:00 timestamp, looks inside the closet, and moves some of the closet's contents to the floor.

PO Olsen's BWC activation (BR 16) shows that an officer opens a locked kitchen closet (approximately 7' tall and 30" wide) with an iron at the 06:35 timestamp, and PO Olsen then looks inside the closet.

In footage received from § 87(2)(b)'s interior home surveillance cameras (BR 22), an officer opens a locked kitchen closet (approximately 7' tall and 30" wide) with an iron at the 08:05 timestamp. Sgt. Fried then looks inside the closet.

Lieutenant Lanigan testified (BR 11) that he directed officers to confirm that no other occupants were inside the apartment, that the stove was off, that there were no children or pets in the apartment, that there were no candles burning, that there were no faucets on. To confirm that there were no other occupants inside the apartment, officers searched the locked closets that could reasonably fit a person inside.

The Supreme Court of the United States ruled in *Maryland v. Buie*, 494 U.S. 325 (BR 23) that a "protective sweep", defined as a quick and limited search of premises "narrowly confined to a cursory visual inspection of those places in which a person might be hiding," may be permissible so long as a reasonable suspicion of danger exists.

Per the Emergency Service Unit Tactics Section Participant Guide (BR 24), ESU officers are to conduct a "slow methodical search" upon conducting a team entry, looking through each room for immediate threats and thoroughly searching through all places where one could be hiding. ESU officers must conduct a search of the entire premise before leaving the location.

In his CCRB interview, Lieutenant Lanigan testified that ESU officers performed a search of the apartment with the sole intent of locating any additional persons inside the apartment, and predominantly searched in places where a person could reasonably be believed to be hiding.

§ 87(2)(g)

§ 87(2)(g)

**Allegation (E) Abuse of Authority: Detective Michael Marotta searched § 87(2)(b) in Brooklyn.**

Between the 08:30 and 09:00 timestamps of § 87(2)(b)'s surveillance footage (BR 22), Det. Marotta opens and briefly looks into the fridge, freezer and oven of § 87(2)(b)'s kitchen. The fridge and freezer was approximately 6' tall and 3' wide, with the freezer box no larger than 2' high. The oven was approximately 3' tall and 3' wide.

Det. Marotta had no independent recollection of this incident (BR 25). Upon reviewing the surveillance footage showing his search of the fridge, freezer and oven, Det. Marotta characterized the search as part of a procedural protective sweep, and testified that he performed the sweep only

to assure that there were no additional occupants in the apartment and to secure the apartment for patrol officers.

Sgt. Fried, Det. Marotta's direct supervisor during this incident, testified (BR 10) that officers may open ovens to assure that the gas is off, and that the opening of fridges and freezers would be subsumed as part of a protective security sweep.

As noted above, the Supreme Court of the United States ruled in Maryland v. Buie, 494 U.S. 325 (BR 23) that a "protective sweep", defined as a quick and limited search of premises "narrowly confined to a cursory visual inspection of those places in which a person might be hiding," may be permissible so long as a reasonable suspicion of danger exists.

As noted above (BR 24), ESU officers are to conduct a "cursory room search" upon making entry at a location, searching only in areas where persons can hide.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the third complaint to which § 87(2)(b) has been a party (BR 28).
  - § 87(2)(b)
  -
- Captain Espinoza has been a member of service for 21 years and has been named a subject in 12 cases and 25 allegations, two of which were substantiated.
  - 200305392 involved a substantiated allegation of discourtesy word against Captain Espinoza. The Board recommended charges, and Captain Espinoza pled guilty to the Deputy Commissioner of Trials. The NYPD imposed a penalty of two vacation days.
  - 201307050 involved a substantiated allegation of premises entered and/or searched against Captain Espinoza. The Board recommended charges and the NYPD imposed a penalty of seven vacation days.
  - § 87(2)(g)
- Lieutenant Lanigan has been a member of service for 31 years and has been named a subject in three cases and four allegations, one of which was substantiated.
  - 9902347 involved a substantiated allegation of discourtesy word against Lieutenant Lanigan. The Board recommended charges and Lieutenant Lanigan was deemed not guilty at trial.
  - § 87(2)(g)

§ 87(2)(g)

- Det. Marotta has been a member of service for 12 years and has been named a subject in two cases and four allegations, none of which have been substantiated. § 87(2)(g)

### **Mediation, Civil, and Criminal Histories**

- § 87(2)(b) rejected mediation.
- As of May 25, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (BR 29).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.: 10

Investigator: Ethan C. Waterman      Inv. Ethan Waterman      November 24, 2021  
Signature      Print Title & Name      Date

Squad Leader: \_\_\_\_\_  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_  
Signature      Print Title & Name      Date